

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.7246 OF 2005

DATED:17.8.2005

Between:

B. Ramulu, S/o.B.Sattaiah

R/o.SRT 244, Jawahar Nagar

RTC Cross Road, Chikkadpally,

Hyderabad

...Petitioner

And

The Commissioner of Prohibition and Excise,

Hyderabad, and others

...Respondents

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WRIT PETITION NO.7246 OF 2005

ORDER:

The petitioner is owner of Maruti Omni Van bearing No.AP 9L 6595. The same was seized by excise officials on 10.9.2004 when it was allegedly found 240 bottles of non-duty paid Indian liquor after registering Crime No.183/2004-2005. The petitioner filed present Writ Petition seeking a declaration that the action of the respondents in seizing the petitioner's vehicle and registering crime is illegal and unconstitutional.

Learned counsel for the petitioner has made various submissions placing reliance on decisions of this Court to the effect that if the vehicle of a person is used for

committing excise offence without his knowledge, the same is not liable for confiscation under Section 46(2) of the A.P.Excise Act, 1968 (for short, the Act).

Learned Government Pleader for Excise while not denying the legal position, however, submits that even before the petitioner filed present Writ Petition, the Deputy Commissioner of Prohibition and Excise has already passed orders on 26.2.2005 ordering confiscation of petitioner's vehicle under Section 46(2) of the Act. It is further submitted by her that though a show cause notice was served on the petitioner, he did not submit any explanation and therefore orders confiscating the vehicle were passed based on the material.

Both the learned counsel do not deny the fact that the issue whether owner of the vehicle had knowledge of vehicle being used for commission of excise offence is a question of fact which cannot be inferred from sworn statements. Learned counsel for the petitioner also does not dispute that show cause notice was issued to petitioner and he did not submit his explanation. In this background, this Court is not inclined to adjudicate the issue especially when competent authority has passed orders under Section 46(2) of the Act confiscating vehicle. In such an event, the person aggrieved by order of confiscation passed by Deputy Commissioner has statutory remedy under Section 46-C of the Act. This is not availed by the petitioner. Therefore, it would be proper to give opportunity to the petitioner to approach the Commissioner of Prohibition and Excise, first respondent herein, under Section 46-C of the Act.

Accordingly, the Writ Petition is disposed of giving liberty to petitioner to file appeal before first respondent under Section 46-C of the Act within a period of one week from the date of receipt of a copy of this order. As and when such appeal is filed, the Commissioner may take appeal on file and dispose of the same after giving reasonable opportunity to the petitioner. No costs.

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(V.V.S.RAO, J)

17.8.2005

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